

**RULEMAKING FISCAL ACCOUNTABILITY AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill amends provisions relating to the Water Quality Board, rulemaking procedure, and the Administrative Rules Review Committee.

**Highlighted Provisions:**

This bill:

- ▶ provides for review and Legislative approval of certain Water Quality Board rules or standards;
- ▶ requires an agency to submit certain proposed rules to an appropriations subcommittee and interim committee for review before the agency enacts the rules;
- ▶ amends the duties of the Administrative Rules Review Committee; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****AMENDS:**

- 19-5-104.5**, as enacted by Laws of Utah 2011, Chapter 304
- 53C-1-201**, as last amended by Laws of Utah 2018, Chapters 13 and 469
- 63G-3-301**, as last amended by Laws of Utah 2017, Chapter 255
- 63G-3-501**, as last amended by Laws of Utah 2016, Chapter 193
- 63G-6a-204**, as last amended by Laws of Utah 2015, Chapter 218

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **19-5-104.5** is amended to read:

**19-5-104.5. Legislative approval.**

- (1) Before sending a board-approved report, strategy, or recommendation that will

recommend a total maximum daily load end point and implementation strategy to the EPA for review and approval, the Water Quality Board shall submit the report, strategy, or recommendation:

(a) for review to the Natural Resources, Agriculture, and Environment Interim Committee if the report, strategy, or recommendation will require a public or private expenditure in excess of \$10,000,000 but less than \$100,000,000 for compliance; or

(b) for approval to the Legislature if the strategy will require a public or private expenditure of \$100,000,000 or more.

(2) (a) As used in this Subsection:

(i) "Expenditure" means the act of expending funds:

(A) by an individual public facility with a Utah Pollutant Discharge Elimination System permit, or by a group of private agricultural facilities; and

(B) through an initial capital investment, or through operational costs over a 20-year period.

(ii) "Utah Pollutant Discharge Elimination System" means the state permit system created in accordance with 33 U.S.C. Sec. 1342.

(b) Before the board adopts a nitrogen, phosphorus, or ammonia rule or standard, the board shall submit the rule or standard as directed in Subsections (2)(c) and (d).

(c) (i) If compliance with the rule or standard requires an expenditure in excess of \$2,000,000, but less than \$10,000,000, the board shall submit the rule or standard for review to the Natural Resources, Agriculture, and Environment Interim Committee.

(ii) (A) Except as provided in Subsection (2)(c)(ii)(B), the Natural Resources, Agriculture, and Environment Interim Committee shall review a rule or standard the board submits under Subsection (2)(c)(i) during the Natural Resources, Agriculture, and Environment Interim Committee's committee meeting immediately following the day on which the board submits the rule or standard.

(B) If the committee meeting described in Subsection (2)(c)(ii)(A) is within five days after the day on which the board submits the rule or standard for review, the Natural Resources, Agriculture, and Environment Interim Committee shall review the rule or standard during the committee meeting described in Subsection (2)(c)(ii)(A) or during the committee meeting immediately following the committee meeting described in Subsection (2)(c)(ii)(A).

64 (d) If compliance with the rule or standard requires an expenditure of \$10,000,000 or  
65 more, the board shall submit the rule or standard for approval to the Legislature.

66 (e) (i) A facility shall estimate the cost of compliance with a board-proposed rule or  
67 standard described in Subsection (2)(b) using:

68 (A) an independent, licensed engineer; and

69 (B) industry-accepted project cost estimate methods.

70 (ii) The board may evaluate and report on a compliance estimate described in  
71 Subsection (2)(e)(i).

72 (f) If there is a discrepancy in the estimated cost to comply with a rule or standard, the  
73 Office of Legislative Fiscal Analyst shall determine the estimated cost to comply with the rule  
74 or standard.

75 ~~[(2)]~~ (3) In reviewing a report, strategy, rule, standard, or recommendation, the Natural  
76 Resources, Agriculture, and Environment Interim Committee may:

77 (a) consider the impact of the report, strategy, rule, standard, or recommendation on:

78 (i) economic costs and benefit;

79 (ii) public health; and

80 (iii) the environment;

81 ~~[(a)]~~ (b) suggest additional areas of consideration; or

82 ~~[(b)]~~ (c) recommend the report, strategy, rule, standard, or recommendation ~~[be~~  
83 ~~re-evaluated by the Water Quality Board.]~~ to the board for:

84 (i) adoption; or

85 (ii) re-evaluation followed by further review by the committee.

86 Section 2. Section **53C-1-201** is amended to read:

87 **53C-1-201. Creation of administration -- Purpose -- Director -- Participation in**  
88 **Risk Management Fund.**

89 (1) (a) There is established within state government the School and Institutional Trust  
90 Lands Administration.

91 (b) The administration shall manage all school and institutional trust lands and assets  
92 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation  
93 of Revenue from Trust Lands, and Title 53D, Chapter 1, School and Institutional Trust Fund  
94 Management Act.

(2) The administration is an independent state agency and not a division of any other department.

(3) (a) ~~[H]~~ The administration is subject to the usual legislative and executive department controls except as provided in this Subsection (3).

(b) (i) The director may make rules as approved by the board that allow the administration to classify a business proposal submitted to the administration as protected under Section 63G-2-305, for as long as is necessary to evaluate the proposal.

(ii) The administration shall return the proposal to the party who submitted the proposal, and incur no further duties under Title 63G, Chapter 2, Government Records Access and Management Act, if the administration determines not to proceed with the proposal.

(iii) The administration shall classify the proposal pursuant to law if ~~[it]~~ the administration decides to proceed with the proposal.

(iv) Section 63G-2-403 does not apply during the review period.

(c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the administration is not subject to Subsections 63G-3-301(5), (6), ~~[and]~~ (7), and (13) and Section 63G-3-601, and the director, with the board's approval, may establish a procedure for the expedited approval of rules, based on written findings by the director showing:

(i) the changes in business opportunities affecting the assets of the trust;

(ii) the specific business opportunity arising out of those changes which may be lost without the rule or changes to the rule;

(iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without causing the loss of the specific opportunity;

(iv) approval by at least five board members; and

(v) that the director has filed a copy of the rule and a rule analysis, stating the specific reasons and justifications for its findings, with the Office of Administrative Rules and notified interested parties as provided in Subsection 63G-3-301(10).

(d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel Management Act, except as provided in this Subsection (3)(d).

(ii) (A) The board may approve, upon recommendation of the director, that exemption for specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to

enable the administration to efficiently fulfill its responsibilities under the law.

(B) The director shall consult with the executive director of the Department of Human Resource Management prior to making such a recommendation.

(iii) The positions of director, deputy director, associate director, assistant director, legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

(iv) (A) Salaries for exempted positions, except for the director, shall be set by the director, after consultation with the executive director of the Department of Human Resource Management, within ranges approved by the board.

(B) The board and director shall consider salaries for similar positions in private enterprise and other public employment when setting salary ranges.

(v) The board may create an annual incentive and bonus plan for the director and other administration employees designated by the board, based upon the attainment of financial performance goals and other measurable criteria defined and budgeted in advance by the board.

(e) The administration shall comply with Title 63G, Chapter 6a, Utah Procurement Code, except where the board approves, upon recommendation of the director, exemption from the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for procurement, which enable the administration to efficiently fulfill its responsibilities under the law.

(f) (i) Except as provided in Subsection (3)(f)(ii), the administration is not subject to the fee agency requirements of Section 63J-1-504.

(ii) The following fees of the administration are subject to the requirements of Section 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change, reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral assignment, electronic payment, and processing.

(g) (i) Notwithstanding Subsection 63J-1-206(2)(c), the administration may transfer funds between its line items.

(ii) Before transferring appropriated funds between line items, the administration shall submit a proposal to the board for its approval.

(iii) If the board gives approval to a proposal to transfer appropriated funds between line items, the administration shall submit the proposal to the Legislative Executive

157 Appropriations Committee for its review and recommendations.

158 (iv) The Legislative Executive Appropriations Committee may recommend:

159 (A) that the administration transfer the appropriated funds between line items;

160 (B) that the administration not transfer the appropriated funds between line items; or

161 (C) to the governor that the governor call a special session of the Legislature to

162 supplement the appropriated budget for the administration.

163 (4) The administration is managed by a director of school and institutional trust lands

164 appointed by a majority vote of the board of trustees with the consent of the governor.

165 (5) (a) The board of trustees shall provide policies for the management of the

166 administration and for the management of trust lands and assets.

167 (b) (i) The board shall provide policies for the ownership and control of Native

168 American remains that are discovered or excavated on school and institutional trust lands in

169 consultation with the Division of Indian Affairs and giving due consideration to Title 9,

170 Chapter 9, Part 4, Native American Grave Protection and Repatriation Act.

171 (ii) The director may make rules in accordance with Title 63G, Chapter 3, Utah

172 Administrative Rulemaking Act, to implement policies provided by the board regarding Native

173 American remains.

174 (6) In connection with joint ventures and other transactions involving trust lands and

175 minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board

176 approval, may become a member of a limited liability company under Title 48, Chapter 3a,

177 Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section

178 48-3a-1405 and is considered a person under Section 48-3a-102.

179 (7) Subject to the requirements of Subsection 63E-1-304(2), the administration may

180 participate in coverage under the Risk Management Fund created by Section 63A-4-201.

181 Section 3. Section **63G-3-301** is amended to read:

182 **63G-3-301. Rulemaking procedure.**

183 (1) An agency authorized to make rules is also authorized to amend or repeal those

184 rules.

185 (2) Except as provided in Sections 63G-3-303 and 63G-3-304, when making,

186 amending, or repealing a rule agencies shall comply with:

187 (a) the requirements of this section;

(b) consistent procedures required by other statutes;

(c) applicable federal mandates; and

(d) rules made by the department to implement this chapter.

(3) Subject to the requirements of this chapter, each agency shall develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency's rules.

(4) (a) Each agency shall file ~~[its]~~ the agency's proposed rule and rule analysis with the office.

(b) Rule amendments shall be marked with new language underlined and deleted language struck out.

(c) (i) The office shall publish the information required under Subsection (8) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.

(ii) For rule amendments, only the section or subsection of the rule being amended need be printed.

(iii) If the executive director or the executive director's designee determines that the rule is too long to publish, the office shall publish the rule analysis and shall publish the rule by reference to a copy on file with the office.

(5) Before filing a rule with the office, the agency shall conduct a thorough analysis, consistent with the criteria established by the Governor's Office of Management and Budget, of the fiscal impact a rule may have on businesses, which criteria may include:

(a) the type of industries that will be impacted by the rule, and for each identified industry, an estimate of the total number of businesses within the industry, and an estimate of the number of those businesses that are small businesses;

(b) the individual fiscal impact that would incur to a typical business for a one-year period;

(c) the aggregated total fiscal impact that would incur to all businesses within the state for a one-year period;

(d) the total cost that would incur to all impacted entities over a five-year period; ~~[and]~~

(e) the total cost that would incur to all impacted entities over a 20-year period; and

~~[(e)]~~ (f) the department head's comments on the analysis.

(6) If the agency reasonably expects that a proposed rule will have a measurable

219 negative fiscal impact on small businesses, the agency shall consider, as allowed by federal  
220 law, each of the following methods of reducing the impact of the rule on small businesses:

221 (a) establishing less stringent compliance or reporting requirements for small  
222 businesses;

223 (b) establishing less stringent schedules or deadlines for compliance or reporting  
224 requirements for small businesses;

225 (c) consolidating or simplifying compliance or reporting requirements for small  
226 businesses;

227 (d) establishing performance standards for small businesses to replace design or  
228 operational standards required in the proposed rule; and

229 (e) exempting small businesses from all or any part of the requirements contained in  
230 the proposed rule.

231 (7) If during the public comment period an agency receives comment that the proposed  
232 rule will cost small business more than one day's annual average gross receipts, and the agency  
233 had not previously performed the analysis in Subsection (6), the agency shall perform the  
234 analysis described in Subsection (6).

235 (8) The rule analysis shall contain:

236 (a) a summary of the rule or change;

237 (b) the purpose of the rule or reason for the change;

238 (c) the statutory authority or federal requirement for the rule;

239 (d) the anticipated cost or savings to:

240 (i) the state budget;

241 (ii) local governments;

242 (iii) small businesses; and

243 (iv) persons other than small businesses, businesses, or local governmental entities;

244 (e) the compliance cost for affected persons;

245 (f) how interested persons may review the full text of the rule;

246 (g) how interested persons may present their views on the rule;

247 (h) the time and place of any scheduled public hearing;

248 (i) the name and telephone number of an agency employee who may be contacted  
249 about the rule;



250 (j) the name of the agency head or designee who authorized the rule;

251 (k) the date on which the rule may become effective following the public comment

252 period;

253 (l) the agency's analysis on the fiscal impact of the rule as required under Subsection

254 (5);

255 (m) any additional comments the department head may choose to submit regarding the

256 fiscal impact the rule may have on businesses; and

257 (n) if applicable, a summary of the agency's efforts to comply with the requirements of

258 Subsection (6).

259 (9) (a) For a rule being repealed and reenacted, the rule analysis shall contain a

260 summary that generally includes the following:

261 (i) a summary of substantive provisions in the repealed rule which are eliminated from

262 the enacted rule; and

263 (ii) a summary of new substantive provisions appearing only in the enacted rule.

264 (b) The summary required under this Subsection (9) is to aid in review and may not be

265 used to contest any rule on the ground of noncompliance with the procedural requirements of

266 this chapter.

267 (10) A copy of the rule analysis shall be mailed to all persons who have made timely

268 request of the agency for advance notice of ~~its~~ the agency's rulemaking proceedings and to

269 any other person who, by statutory or federal mandate or in the judgment of the agency, should

270 also receive notice.

271 (11) (a) Following the publication date, the agency shall allow at least 30 days for

272 public comment on the rule.

273 (b) The agency shall review and evaluate all public comments submitted in writing

274 within the time period under Subsection (11)(a) or presented at public hearings conducted by

275 the agency within the time period under Subsection (11)(a).

276 (12) (a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule

277 becomes effective on any date specified by the agency that is:

278 (i) no fewer than seven calendar days after the ~~close of~~ day on which the public

279 comment period closes under Subsection (11)~~[, nor]; and~~

280 (ii) no more than 120 days after the ~~publication date~~ day on which the rule is

281 published.

282 (b) The agency shall provide notice of the rule's effective date to the office in the form  
283 required by the department.

284 (c) The notice of effective date may not provide for an effective date [~~prior to~~] before  
285 the [~~date it is received by the office~~] day on which the office receives the notice.

286 (d) The office shall publish notice of the effective date of the rule in the next issue of  
287 the bulletin.

288 (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is  
289 not filed with the office within 120 days [~~of publication~~] after the day on which the rule is  
290 published.

291 (13) (a) Before an agency enacts a rule, the agency shall submit to the appropriations  
292 subcommittee and interim committee with jurisdiction over the agency the agency's proposed  
293 rule, if the proposed rule, over a 20-year period, has a fiscal impact of more than:

294 (i) \$2,000,000 to a single person; or

295 (ii) \$50,000,000 to a group of persons.

296 (b) An appropriations subcommittee or interim committee that reviews a rule  
297 submitted under Subsection (13)(a) may recommend to the Administrative Rules Review  
298 Committee that the Administrative Rules Review Committee not reauthorize the rule in the  
299 omnibus legislation described in Section 63G-3-502.

300 [~~(13)~~] (14) (a) As used in this Subsection [~~(13)~~] (14), "initiate rulemaking proceedings"  
301 means the filing, for the purposes of publication in accordance with Subsection (4), of an  
302 agency's proposed rule that is required by state statute.

303 (b) A state agency shall initiate rulemaking proceedings no later than 180 days after the  
304 [~~effective date of~~] day on which the statutory provision that specifically requires the  
305 rulemaking takes effect, except under Subsection [~~(13)~~] (14)(c).

306 (c) When a statute is enacted that requires agency rulemaking and the affected agency  
307 already has rules in place that meet the statutory requirement, the agency shall submit the rules  
308 to the Administrative Rules Review Committee for review within 60 days after the day on  
309 which the statute requiring the rulemaking takes effect.

310 (d) If a state agency does not initiate rulemaking proceedings in accordance with the  
311 time requirements in Subsection [~~(13)~~] (14)(b), the state agency shall appear before the

legislative Administrative Rules Review Committee and provide the reasons for the delay.

Section 4. Section **63G-3-501** is amended to read:

**63G-3-501. Administrative Rules Review Committee.**

(1) (a) There is created an Administrative Rules Review Committee of the following 10 permanent members:

(i) five members of the Senate appointed by the president of the Senate, no more than three of whom may be from the same political party; and

(ii) five members of the House of Representatives appointed by the speaker of the House of Representatives, no more than three of whom may be from the same political party.

(b) Each permanent member shall serve:

(i) for a two-year term; or

(ii) until the permanent member's successor is appointed.

(c) (i) A vacancy exists when a permanent member ceases to be a member of the Legislature, or when a permanent member resigns from the committee.

(ii) When a vacancy exists:

(A) if the departing member is a member of the Senate, the president of the Senate shall appoint a member of the Senate to fill the vacancy; or

(B) if the departing member is a member of the House of Representatives, the speaker of the House of Representatives shall appoint a member of the House of Representatives to fill the vacancy.

(iii) The newly appointed member shall serve the remainder of the departing member's unexpired term.

(d) (i) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a)(i) as a cochair of the committee.

(ii) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(a)(ii) as a cochair of the committee.

(e) Three representatives and three senators from the permanent members are a quorum for the transaction of business at any meeting.

(f) (i) Subject to Subsection (1)(f)(ii), the committee shall meet at least once each month to review new agency rules, amendments to existing agency rules, and repeals of existing agency rules.

(ii) The committee chairs may suspend the meeting requirement described in Subsection (1)(f)(i) at the committee chairs' discretion.

(2) The office shall submit a copy of each issue of the bulletin to the committee.

(3) (a) The committee shall exercise continuous oversight of the rulemaking process.

(b) The committee shall examine each rule submitted by an agency to determine:

(i) whether the rule is authorized by statute;

(ii) whether the rule complies with legislative intent;

(iii) the rule's impact on the economy and the government operations of the state and local political subdivisions; ~~and~~

(iv) the rule's impact on affected persons~~[-]~~;

(v) the rule's total cost to entities regulated by the state;

(vi) the rule's benefit to the citizens of the state; and

(vii) whether adoption of the rule requires legislative review or approval.

(c) (i) To carry out these duties, the committee may examine any other issues that the committee considers necessary.

(ii) The committee may also notify and refer rules to the chairs of the interim committee that has jurisdiction over a particular agency when the committee determines that an issue involved in an agency's rules may be more appropriately addressed by that committee.

(d) In reviewing a rule, the committee shall follow generally accepted principles of statutory construction.

(4) When the committee reviews an existing ~~[rules]~~ rule, the committee chairs shall invite the Senate and House chairs of the standing committee and of the appropriation subcommittee that have jurisdiction over the agency whose existing ~~[rules are]~~ rule is being reviewed to participate as nonvoting, ex officio members with the committee.

(5) The committee may request that the Office of the Legislative Fiscal Analyst prepare a fiscal note on any rule.

(6) In order to accomplish the committee's functions described in this chapter, the committee has all the powers granted to legislative interim committees under Section 36-12-11.

(7) (a) The committee may prepare written findings of the committee's review of a rule and may include any ~~[recommendations]~~ recommendation, including legislative action.

(b) When the committee reviews a rule, the committee shall provide to the agency that

374 enacted the rule:

375 (i) the committee's findings, if any; and

376 (ii) a request that the agency notify the committee of any changes the agency makes to  
377 the rule.

378 (c) The committee shall provide a copy of the committee's findings, if any, to:

379 (i) any member of the Legislature, upon request;

380 (ii) any person affected by the rule, upon request;

381 (iii) the president of the Senate;

382 (iv) the speaker of the House of Representatives;

383 (v) the Senate and House chairs of the standing committee that has jurisdiction over the  
384 agency that made the rule; and

385 (vi) the Senate and House chairs of the appropriation subcommittee that has  
386 jurisdiction over the agency that made the rule.

387 (8) (a) (i) The committee may submit a report on ~~[its]~~ the committee's review of state  
388 agency rules to each member of the Legislature at each regular session.

389 ~~[(b)]~~ (ii) The report shall include:

390 ~~[(i)]~~ (A) any ~~[findings and recommendations]~~ finding or recommendation the  
391 committee made under Subsection (7);

392 ~~[(ii)]~~ (B) any action an agency took in response to a committee ~~[recommendations]~~  
393 recommendation; and

394 ~~[(iii)]~~ (C) any ~~[recommendations]~~ recommendation by the committee for legislation.

395 (b) If the committee receives a recommendation not to reauthorize a rule, as described  
396 in Subsection 63G-3-301(13)(b), and the committee recommends to the Legislature  
397 reauthorization of the rule, the committee shall submit a report to each member of the  
398 Legislature detailing the committee's decision.

399 Section 5. Section **63G-6a-204** is amended to read:

400 **63G-6a-204. Applicability of rules and regulations of Utah State Procurement**  
401 **Policy Board and State Building Board -- Report to interim committee.**

402 (1) Except as provided in Subsection (2), rules made by the board under this chapter  
403 shall govern all procurement units for which the board is the applicable rulemaking authority.

404 (2) The building board rules governing procurement of construction, design

405 professional services, and leases apply to the procurement of construction, design professional  
406 services, and leases of real property by the Division of Facilities Construction and  
407 Management.

408 (3) An applicable rulemaking authority may make its own rules, consistent with this  
409 chapter, governing procurement by a person over which the applicable rulemaking authority  
410 has rulemaking authority.

411 (4) The board shall make a report on or before July 1 of each year to a legislative  
412 interim committee, designated by the Legislative Management Committee created under  
413 Section 36-12-6, on the establishment, implementation, and enforcement of the rules made  
414 under Section 63G-6a-203.

415 (5) Notwithstanding Subsection 63G-3-301~~[(13)]~~(15)(b), an applicable rulemaking  
416 authority is required to initiate rulemaking proceedings, for rules required to be made under  
417 this chapter, on or before:

418 (a) May 13, 2014, if the applicable rulemaking authority is the board; or

419 (b) January 1, 2015, for each other applicable rulemaking authority.